

March 15, 2023
Sl. No.60
Court No.654
s.biswas

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 1283 of 2022

Arati Roy

versus

Kalpana Roy (Ganguly) and others

Mr. Debashis Roy, Sr. Adv.,
Ms. Anita Deb, Advocate

... for the plaintiff/petitioner

Mr. Jayanta Kumar Das,
Ms. Madhumonti Das, Advocates

... for the opposite party no.1

Affidavit-of-service filed on behalf of the
plaintiff-petitioner is taken on record.

This revisional application is filed by the
plaintiff-petitioner under Article 227 of the
Constitution of India challenging judgment and order
dated 25th January, 2022 passed by learned
Additional District Judge, 4th Court, 24 Parganas
(North) at Barasat in Miscellaneous Appeal No.203 of
2015 affirming the order dated 26th November, 2015
passed by learned Civil Judge (Senior Division), 1st
Court at Barasat in Title Suit No.1303 of 2015.

The brief facts of the case is that the plaintiff-
petitioner filed a suit for declaration and permanent
injunction contending, *inter alia*, that she is a tenant
in respect of the suit property and the defendants
are forcibly trying to evict her from the suit premises.
In the said suit the plaintiff-petitioner filed an
application for *ad interim* injunction under Order

XXXIX Rule 1 and 2 of the Civil Procedure Code which was refused by the learned Trial Court. The order of refusal of *ad interim* injunction was assailed in the appeal before the Appellate Court in Miscellaneous Appeal No.203 of 2015. The order of the learned Trial Court rejecting the *ad interim* injunction was affirmed by the Appellate Court.

Hence this revision.

Mr. Debashish Roy, learned Senior Advocate appearing on behalf of the plaintiff-petitioner submits that the learned Appellate Court erred in observing that the petitioner-plaintiff has sought for injunction in respect of the entire suit property. However the actual fact remains that the plaintiff-petitioner being a tenant in the suit property comprising of one room and other facilities annexed thereto had sought for injunction in respect of her possession in the tenanted portion only. He further submits that it is a settled proposition of law that even a trespasser should not be dispossessed without due process of law. In view of above submission, he prays for appropriate order.

He also indicates that the Appellate Court at the initial stage passed *ad interim* injunction in favour of the plaintiff-petitioner and during subsistence of order of injunction the plaintiff-petitioner was dispossessed from the suit property and under

compelling circumstances the plaintiff-petitioner filed an application for recovery of the possession being Misc. Case No.8 of 2016, which is still pending before the Appellate Court.

Upon going through the revisional application it appears that the plaintiff-petitioner has challenged the impugned order with a prayer for an *ad interim* injunction against the opposite parties. Be that as it may, fact remains that the plaintiff-petitioner has been dispossessed from the suit premises which resulted in filing of Misc. Case No.8 of 2016 for recovery of possession. The said Misc Case is pending before the Appellate Court. That being the position, the prayer made in the present revisional application has become redundant.

By the impugned judgment though the Appellate Court disposed of the Miscellaneous Appeal No.203 of 2015 but the Misc. Case being No.8 of 2016 for recovery of possession filed by the plaintiff-petitioner has not been disposed of.

Accordingly, the Appellate Court is directed to dispose of the Misc. Case being No.8 of 2016 pending before it as expeditiously as possible preferably within a period of two months without giving unnecessary adjournments to either of the parties, with opportunity to the opposite party to file written objection, if any.

With the aforesaid observation, the revisional application being **C.O. 1283 of 2022** stands disposed of.

All connected application, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Bivas Pattanayak, J.)